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In the circumstances, the charge was amended by substituting for the words "punishable under Regulations" the words "punishable under section 8(1) of the Road Transport Proclamation", and the order of disqualification was cancelled.

REVISION.

Smith J.: — The accused was charged in the following terms:—

"That you on 4.2.58 at about 5.45 p.m. at the roundabout at Railway Station, Seremban being the driver of motor vehicle No. N.9717 was involved in an accident did fail to produce your Insurance Policy to the nearest Police within the prescribed period of 5 days when requested to do so by a Police Officer in uniform to wit Sgt. 348 and you thereby committed an offence under reg. 15(1) and punishable under reg. 3(2) of the M/Vehicles Third Party Risks Regulations GN. 452/46."

He pleaded guilty and admitted the facts in the charge. The learned Magistrate convicted him, fined him \$35 and ordered that he be disqualified for holding or obtaining a driving licence for a period of twelve months from the date of the conviction since such an order was mandatory under Regulation 3(2) of the Motor Vehicles Third Party Risks Regulations.

The first point which this revision raises is that the charge is improperly framed since an offence under Regulation 15(1) of the Regulations is not punishable under Regulation 3(2). Paragraph (2) of Regulation 3 provides punishments for offences under paragraph (1) of Regulation 3 only.

No specific punishment is provided for an offence against Regulation 15. Recourse must therefore be had to section 8(1) of the Road Transport Proclamation which provides various terms of imprisonment and fine but does not provide for disqualification of any kind.

I therefore amend the charge by substituting for the words "punishable under Regulation 3(2) of the Motor Vehicles Third Party Risks Regulations" the words "punishable under section 8(1) of the Road Transport Proclamation", and I further order that the order of disqualification be cancelled.

Order accordingly.

ANTHONY v. ANTHONY (nee PRAGASAM)

[O.C.J. (Sutherland J.) June 10, 1958]

[K.L. — Divorce Suit No. 2 of 1958]

Husband and wife — Restitution of conjugal rights — Petition for — Jurisdiction — Petitioner

A ordinarily resident in Singapore but works in the Federation — Domicile in Taiping — Divorce Ordinance, 1952, s.4(3)(b) — R.S.C., 1957, O.25.

In this case the petitioner presented his petition to the Court on February 25, 1956 and stated in that petition that he was formerly residing in Gemas in the Federation of Malaya but at the time of filing the petition he was staying in Singapore, since July 1955 after his transfer on duty as locomotive engine driver in the Malayan Railways. After their marriage petitioner lived and cohabited with the respondent in the Federation and in Singapore. The respondent withdrew from cohabitation on August 2, 1955 and left petitioner's house in Singapore.

B The respondent in her answer, *inter alia*, pleaded that the Court had no jurisdiction to entertain the petition and that it should be dismissed. At the outset of the hearing Counsel for the respondent referred to Order 25 of the R.S.C., 1957 and raised the point of jurisdiction pleaded in the answer.

C **Held:** as the petitioner was ordinarily resident in Singapore, the Court had no jurisdiction to entertain the petition and therefore the petition must be dismissed.

Cases referred to:—

(1) *Flowers v. Flowers* (1910), I.L.R. 22 All. 203.

(2) *Stransky v. Stransky*, (1954) P. 429.

E (3) *Macrae v. Macrae*, (1949) P. 397.

(4) *Willis v. Willis*, (1941) M.L.J. 169.

DIVORCE SUIT.

K. L. Devaser for the petitioner.

M. W. Maxwell for the respondent.

Cur. Adv. Vult.

Sutherland J.: — This was a petition for restitution of conjugal rights. Petitioner described himself as J. Anthony, of 46, Bridport Avenue, Serangoon Garden Estate, Singapore 19 (at present). The petition was dated the 26th January, 1956. It commenced:

G "The petition of J. Anthony residing at present at 46, Bridport Avenue, Serangoon Garden Estate, Singapore."

H It stated that petitioner was formerly residing in Gemas in the Federation of Malaya and is at present in Singapore since July, 1955 after his transfer on duty as a locomotive engine driver in the Malayan Railways. After the marriage petitioner lived and cohabited with respondent in the Federation of Malaya and at Singapore. Respondent on the 2nd of August, 1955 withdrew from cohabitation and left petitioner's house at Singapore. Petitioner declared that the petition is true.

I This petition was presented to the Court on 25.2.56, and after ascertainment that there was no pending petition between the same parties in other Registries was registered on the 5th of

March, 1956. Enclosure No. 4 on the file is an affidavit by the petitioner affirmed on 26th January, 1956. It significantly describes petitioner as residing at No. 46, Bridport Avenue, Serangoon Garden Estate, Singapore 19.

Respondent, in her answer, *inter alia*, pleaded that this Court has no jurisdiction and prayed that the petition be rejected.

No. 8 on the file is an application by petitioner's solicitor for Registrar's Certificate. This application again significantly states that petitioner resides at No. 46, Bridport Avenue, Serangoon Garden Estate, Singapore 19.

On the 29th January, 1957 the Court granted petitioner leave to amend his petition, which he duly did. In his amended petition he describes himself as residing *temporarily* at present at 46, Bridport Avenue, Serangoon Garden Estate, Singapore. He also states that his residence is in the Federation of Malaya. No. 27 on the file is an affidavit by petitioner dated 4.2.57 annexed to his amended petition. In this affidavit petitioner states that he was transferred to Singapore in July, 1955. Before this transfer, he was residing at No. 76, Railway Quarters, Gemas. On 2nd August, 1955 respondent left Singapore. After she left petitioner was temporarily staying with his mother at No. 46, Bridport Avenue, Serangoon Garden Estate, Singapore 19. Petitioner is now given Railway Quarters, No. 14, Johore Flats, Spooner Road, Singapore 3, which belong to the Government of the Federation of Malaya. Petitioner works for 8 hours and takes off about 20 hours which he spends either at 76, Railway Quarters, Gemas, or at Railway Bungalow, Kluang. He works again for 8 hours and takes off about 12 hours which he spends at his present Railway Quarters, Singapore. This has been his duty arrangement ever since 26th July, 1955. Petitioner was born in Taiping which he claims to be his domicile and permanent residence. The address of such residence is 105, Aulong Village, Taiping.

No. 43 on the file is an application dated 11.4.58 by petitioner's solicitor for renewal of Registrar's Certificate. It states that petitioner's residence is at No. 46, Bridport Avenue, Serangoon Garden Estate, Singapore 19.

At the outset of the hearing on 29.5.58, counsel for respondent referred to Order 25 of the Rules of the Supreme Court, 1957 and raised the point of jurisdiction pleaded in the Answer.

It is necessary, at this stage, to cite section 4 sub-section 3(b) of the Divorce Ordinance, 1952. It reads:

"Nothing herein shall authorise the Court to make any decree of judicial separation or of restitution of conjugal rights except—

(a) Where both parties to the marriage reside in the Federation at the time of the commencement of proceedings."

Counsel emphasised that petitioner's address is in Singapore. Counsel cited *Flowers v. Flowers*,⁽¹⁾ where, at page 205 appears this passage:

"Mere casual residence in a place for a temporary purpose with no intention of remaining is not 'dwelling' and where a party has a fixed residence out of the jurisdiction, an occasional visit within the jurisdiction will not suffice to confer jurisdiction by reason of residence."

Also cited was *Stransky v. Stransky*.⁽²⁾ At page 435 appears the following passage:

"In *Levene v. Commissioners of Inland Revenue* Viscount Cave L.C. said: ".....the word 'reside' is a familiar English word and is defined in the Oxford English Dictionary as meaning 'to dwell permanently or for a considerable time, to have one's settled or usual abode, to live in or at a particular place'."

At page 437 appears this passage:

"But it is to be observed that section 18(1)(b) of the Matrimonial Causes Act, 1950, uses the term 'resident' as a requirement at the time of the institution of the suit, and the term 'ordinarily resident' as a requirement during the preceding three years. I do not think that the use of the two terms is either meaningless or accidental."

I respectfully agree with this passage. I note that in section 4(3)(b) of our Ordinance the word "reside" simpliciter is used. Lower down at page 437 already cited appears this passage:

"But as Mr. Colin Duncan suggested in argument, one of the tests in the present case is to find the answer to this question: Where between July 28, 1950, and July 28, 1953, was the wife's real home?"

In *Macrae v. Macrae*⁽³⁾ at 403 there is this dictum of Somervell, L.J.:

"Where there are indications that the place to which he moves is the place which he intends to make his home for at any rate an indefinite period, then as from that date in my opinion he is ordinarily resident at the place to which he has gone."

Counsel stressed that except when petitioner has to do a trip to the Federation, he is in Singapore. Petitioner has given two addresses in Singapore.

It is of interest to note that, should restitution of conjugal rights be decreed, respondent would be ordered to return home. It appears to me that this was in Singapore. This would support a finding that petitioner resided in Singapore.

Counsel invited the Court to hear petitioner on the point of jurisdiction.

Counsel for petitioner asked that petitioner give evidence as to residence. He urged that there is no intent to make petitioner's home in Singapore, and that petitioner may be transferred back to the Federation. Counsel cited *Willis v. Willis*.⁽⁴⁾ At page 171 of that report occurs this passage:

"The word 'reside' has been said to be a flexible or elastic word. 'I take it that that word (viz. 'reside'), where there is nothing to show that it is used in a more extensive sense, denotes, the place where an individual eats, drinks and sleeps or where his family or his servants eat, drink and sleep', *R. v. Inhabitants of North Curry*."

This, I apprehend, might be termed the classic meaning.

Counsel asked: Did petitioner lose his Federation residence by going to Singapore?

Counsel for respondent replied that the purpose of the Ordinance is to ensure that the parties are physically within the jurisdiction—the jurisdiction is in personam.

In evidence petitioner affirmed that in August, 1955 he was transferred to Singapore and is still in Singapore. Duties are irregular. There is a train on which he starts work at 6 a.m. It goes as far as Gemas—six hours' journey. He rests at 76, Railway Quarters, Gemas, till the next day-train at noon when he starts another train to Singapore. He stops duty at 8 p.m. at Singapore. He may be asked to work the 4.45 a.m. train to Kluang or the 11.45 a.m. mixed train to Gemas. That is his usual tour of duty. He is subject to transfer. When he retires he intends settling down in Taiping. He is occupying Malayan Railway Quarters at Singapore.

Petitioner continued that he is not particularly required to stay in Singapore. As he is posted to Singapore he is required to stay in Singapore to start the train. Other than that he can be in Johore Bahru or Kluang. He can take a bus from Johore Bahru to Singapore to start his train. Malayan Railways do not give him accommodation in Johore Bahru.

Petitioner agreed that when he started the proceedings he gave his address as 46, Bridport Avenue, Singapore. He was not living there. He gave that address because he had no Railway Quarters. It was his mother's address. When the petition was sworn both the petitioner's parents were living in Singapore. When questioned as to why he declared that he was residing at 46, Bridport Avenue, Singapore, petitioner replied that he had no permanent address. Often he visited 46, Bridport Avenue, so he gave it as his residence. Petitioner affirmed that he had

A bought 46, Bridport Avenue. It is his own house.

This, of course, was not conclusive evidence that petitioner resided in Singapore, but in my view, it was one of the *indicia* to be taken into account in the particular facts of this case.

B Petitioner said he had never stayed at this house. Since 1955 petitioner might have taken about nine days' leave. He made use of this leave to come to Kuala Lumpur, not to Taiping. When petitioner goes to Gemas he has a relative at 76, Railway Quarters and lodges with that relative. As between Singapore and Gemas, petitioner says he lives in Gemas.

C I should say at this stage that I did not accept this piece of evidence, particularly as a little later in his evidence petitioner stated that he is given living quarters in Singapore and not in Gemas.

D Witness agreed that he did not say he lived at Gemas in his petition. Petitioner is in the Singapore Running Shed. Then followed petitioner's evidence that he is given living quarters in Singapore and not in Gemas.

E Petitioner's mother is at Singapore. Witness bought the house at 46, Bridport Avenue, Singapore, in 1954 before he was transferred to Singapore. He bought the house for his mother to live in. If petitioner chose to live in Johore Bahru there would be no objection by the Railways. Witness's brothers are in Singapore. Witness can attend to work from Johore Bahru. He can go by bus. Many people do. It is quite convenient. There are Railway quarters in Johore Bahru. As a driver petitioner would not be given quarters in Johore Bahru unless he gets a transfer. Malayan Railways are not interested in where he stays. He can stay in Johore Bahru or in Singapore.

G Counsel for respondent asked for a ruling on the question of jurisdiction. He submitted that on the evidence petitioner's work makes it possible for him to choose between the Federation and Singapore. Petitioner has sworn that he resided in Singapore. He has lived in Singapore since before the proceedings and does not bring himself within the section.

I I remind myself that the time of the commencement of the proceedings is the critical time. The point is a short one: Did both parties to the marriage reside in the Federation at the time of the commencement of the proceedings? Unless they did, nothing in the Ordinance authorises the Court to make a decree of restitution of conjugal rights. It is not disputed that respondent resided in the Federation at the relevant time. This leaves the only

point in issue: Did petitioner reside in the Federation at the time of the commencement of the proceedings? As petitioner claims that he did, I think it may be pertinent, though not conclusive, to enquire whereabouts in the Federation? I can find no satisfactory answer to this question.

Construction of the word "reside" has given rise to much litigation and formed the subject of many reported decisions, some of which have been cited in this case. When this case first came before me on the 29th of January, 1957, it was apparent that the question of jurisdiction was a very live issue and this was confirmed on 29th May, 1958. The argument with which I have been favoured and the evidence of the petitioner has convinced me that petitioner at the time of the commencement of the proceedings resided not in the Federation but in Singapore. I think that the passage which I have cited above from *Macrae's*⁽³⁾ case supports this view.

In my view when, in 1955, petitioner was transferred to Singapore petitioner intended to make his home there for an indefinite period. He is still there. I think the true position was disclosed in petitioner's original petition verified by his affidavit. By these two documents petitioner affirmed that he was residing on the 26th January, 1956 at 46, Bridport Avenue, Serangoon Garden Estate, Singapore. I think that that was true and that petitioner coming to realise that section 4(3)(b) of the Ordinance debarred him from relief, sought on that ground so to amend his petition as to bring himself within the jurisdiction. I think, however, that on the facts petitioner has failed to establish his residence in the Federation at the time of the commencement of the proceedings. Petitioner's case is analogous to that of a commercial traveller who has his home in one city and who, though he travels extensively and for lengthy periods on duty, still resides in that city.

Each case must depend on its own facts, and this maxim is particularly apt in cases turning on the construction of the word "reside."

In my view the decision of this point substantially disposes of the whole case and I dismiss the petition with costs to the respondent.

Petition dismissed.

Solicitors: K. L. Devaser; Lovelace & Hastings.

A PUBLIC PROSECUTOR v. M. K. MOHIDEEN & ONG LTD.

[A. Cr. J. (Good J.) August 28, 1958]

[Ipoh — Criminal Appeal No. 21 of 1958]

*Machinery Ordinance, 1953, s. 17(1) —
B Obligation of owners of mill to report accident —
Distinction between servants and independent contractors.*

The respondents to this appeal were acquitted on a charge of failing to report a machinery accident which occurred in their oil mill. The ground on which they were acquitted was that the person disabled in the accident was not an employee or servant of the respondent but an independent contractor. The Public Prosecutor appealed against the decision.

Held: (1) the Magistrate was wrong in applying to the interpretation of a statutory provision the tests which distinguish servants from independent contractors for the purposes of the law of torts;

(2) there is an obligation on the owners of machinery, under section 17(1) of the Machinery Ordinance, 1953, to report an accident involving a person employed at work at the machinery, irrespective of whether such person is employed as a servant or an independent contractor.

D MAGISTRATE'S APPEAL (CRIMINAL)

Abdul Kadir bin Yusof (Federal Counsel)
for the appellant.

K. Y. Khong for the respondent.

Cur. Adv. Vult.

Good J.: — The respondents in this appeal are the owners of an oil mill. They were acquitted by the Ipoh Magistrate on a charge of failing to report a machinery accident which occurred at the mill in April last year. The ground on which they were acquitted was that the person disabled in the accident was not an employee or servant of the respondents but an independent contractor. The Public Prosecutor appealed against the acquittal.

I am of the opinion that there was an obligation on the owners of the machinery under section 17(1) of the Machinery Ordinance, 1953, to report this accident, and I think that the mistake which the learned Magistrate made in deciding the case as he did was to apply to the interpretation of a statutory provision the tests which distinguish servants from independent contractors for the purposes of the law of torts. The conditions precedent to the creation of a liability to report a machinery accident are: